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Air Products and Chemicals, Inc.
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26 August 1993

Ms. Katherine A. Lose (3HW42)
Remedial Project Manager
EPA Region III
841 Chestnut Building
Philadelphia, PA 19107

Re: Standard Chlorine Superfund Site
Delaware City, Delaware

Dear Ms. Lose:

This is in response to the 21 July 1993 General Notice Letter ("Notice Letter") issued to Air Products and Chemicals, Inc. ("Air Products") for the Standard Chlorine of Delaware Superfund Site ("Site"). For the reasons set forth below, Air Products requests that the EPA delete it from the list of potentially responsible parties ("PRPs") for the Site and rescind the Notice Letter.

The EPA bottoms its claim that Air Products is a PRP for the Site upon the fact that "EPA has reason to believe that Air Products and Chemicals, Inc. owns a portion of the property where Standard Chlorine of Delaware, Inc. stockpiled soils and sediments contaminated with chlorinated benzenes." (See pg. 2 of the Notice Letter.) At the outset, it should be noted that all information regarding the ownership of the property on which some of the excavated soil has been stockpiled was provided to EPA and the Delaware Department of Natural Resources and Environmental Control ("DNREC") (collectively the "Agencies") by Air Products. In fact, this information was communicated by Air Products to the Agencies immediately upon becoming aware that Standard Chlorine had deposited the soil without Air Products' knowledge or consent. Moreover, Air Products met with representatives of the EPA and DNREC at the site to tour the soil piles, and provided EPA with photos and drawings illustrating the nature and location of the pile on its property. Air Products' "reward" for this cooperation was the Notice Letter from EPA without any intervening communication.

Setting aside for the moment Air Products' concerns over the aforementioned sequence of events, Air Products contends that the mere fact that it owns property upon which Standard Chlorine has stockpiled excavated soil does not render it a PRP for the Site.

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EPA is well aware that Standard Chlorine stockpiled the materials on the property without Air Products' knowledge or consent. If Air Products is deemed a PRP under this scenario, then any party whose property is in any way affected by a release or threatened release of hazardous substances from a superfund site is itself a PRP. Taken to its logical conclusion, this reasoning would require a party, including a residential homeowner, whose potable groundwater well was contaminated by a plume emanating from a superfund site one mile away to be designated a PRP for that site. Congress surely did not intend CERCLA to reach such an absurd result. Indeed, Congress provided a defense to liability for innocent parties such as Air Products for the acts of unrelated parties pursuant to CERCLA 107(b)(3).

As is its custom, Air Products seeks to cooperate with the Agencies and, accordingly, is willing to voluntarily provide appropriate access to the property in question. Air Products believes, however, that this access can be afforded outside of the "PRP" process. As such, Air Products' believes that the PRP designation is unwarranted and therefore requests that the EPA rescind the Notice Letter and delete it from the list of PRPs for the Site.

Air Products would also like to take this opportunity to comment upon another aspect of the Standard Chlorine Superfund Site. Since February 1992, Air Products has been attempting to convince DNREC that Standard Chlorine should further investigate whether its spill has impacted Air Products' property in the vicinity of the boundary between our two properties. This request was based upon the results of the August 1990 sampling of MW-10 on Air Products' property and the historical sampling results for monitoring wells TW-1 through 4 on Standard Chlorine's property. Wells TW-1 through 4 are located quite close to the property boundary and the groundwater results show significant levels of chlorinated benzene species in those wells. Moreover, the soils in the vicinity of TW-1 through 4 were considerably contaminated at depth.

The enclosed correspondence charts the history of this request for further investigation, which dates back to February 1992. Air Products has not received a reply to its 15 March 1993 letter to DNREC's Anne Hiller. We are particularly dismayed that the Agencies have not responded to these legitimate concerns regarding the impact of Standard Chlorine's spill on our groundwater, but have seen fit to label Air Products a PRP simply because excavated soil has been stockpiled on another section of its property.

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If you have an questions or require any further information,
please contact me at 481-2558.

Very truly yours,



Todd Solodar

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cc: Ms. Anne Hiller
Sarah Keating, Esq.

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